STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SANGER UNIFIED SCHOOL DISTRICT, Charging Party,	)	Case No. S-CO-209
v.	)	PERB Decision No. 811
SANGER UNIFIED TEACHERS ASSOCIATION, CTA/NEA, Respondent.	)	June 4, 1990

Appearances: Stroup & de Goede by Robert W. Stroup, Attorney, for Sanger Unified School District; California Teachers Association by Diane Ross, Attorney, for Sanger Unified Teachers Association, CTA/NEA.

Before Craib, Shank and Camilli, Members.

DECISION AND ORDER

CAMILLI, Member: This case is before the Public Employment Relations Board (Board) on appeal by the Sanger Unified School District (District), of a Board agent's dismissal (attached hereto) of its charge filed against the Sanger Unified Teachers Association, CTA/NEA (SUTA or Association). In its second amended charge, the District alleged that SUTA engaged in bad faith bargaining when it: (1) walked out of a mediation session; (2) involved students in the negotiation process; (3) threatened to strike during the next school year if an agreement was not reached; and (4) intentionally misrepresented proposals to its membership to assure rejection of such proposals. This conduct was alleged to violate section 3543.6(c) of the Educational

Employment Relations Act (EERA).[1] The Board agent dismissed the charge for failure to state a prima facie violation.

We have reviewed the dismissal and, finding it to be free of prejudicial error, adopt it as the decision of the Board itself.[2] We further address the District's argument on appeal that the Board agent failed to consider whether SUTA's alleged intentional misrepresentation of proposals to its membership constitutes a prima facie violation of section 3543.6(c).

DISCUSSION

The District argues that SUTA engaged in bad faith bargaining when it violated an agreement made during mediation to present the mediator/District's proposals to its members in a "neutral manner." The District asserts the SUTA bargaining team intentionally misrepresented the District's proposals to assure rejection at a membership vote. Relying on California State Employees' Association (O'Connell) (1986) PERB Decision

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[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.6(c) states:

> It shall be unlawful for an employee organization to:
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> . . . . . .
>
> (c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.

[2]We do not adopt, however, that portion of the Board agent's dismissal letter that addresses the Association's alleged misrepresentation of the District's bargaining proposal.

No. 596-H, the District argues that a prima facie violation of bad faith bargaining is shown when the employer alleges that the union knowingly misrepresented the employer's position to secure a rejection of a contract.[3] The District claims extension of this rule is necessary because direct communications by the District with its employees, for the purpose of accurately clarifying its proposals, would constitute an unlawful bypass of the exclusive representative, i.e., SUTA. As a result, SUTA is placed in the "all-powerful" position of being able to misrepresent and distort proposals to assure their rejection.

The District's argument is without merit. Integral to the Board's analysis in California State Employees' Association, supra, was the exclusive representative's duty of fair representation owed to unit members. The exclusive representative owes no analogous duty to the employer. Thus, an extension of the rule established in California State Employees' Association, supra, is not appropriate.

Additionally, in Rio Hondo Community College District (1980) PERB Decision No. 128, the Board specifically recognized that "a public school employer is entitled to express its views on employment related matters over which it has legitimate concerns

[3]In California State Employees' Association, supra, the Board held that a prima facie violation of a breach of an exclusive representative's duty of fair representation had been shown where the employee alleged the union knowingly misrepresented facts in order to secure from its constituents their ratification of a contract. Accordingly in this appeal the Board is requested to extend this rule to communications by the exclusive representative designed to defeat ratification of the contract.

in order to facilitate full and knowledgeable debate." The Board also established the following test to determine if such communications violate EERA:

> The Board finds that an employer's speech which contains a threat of reprisal or force or promise of benefit will be perceived as a means of violating the Act and will, therefore, lose its protection and constitute strong evidence of conduct which is prohibited by section 3543.5 of the EERA. (Id. at p. 20.) (Emphasis added.)

In formulating this test, Board examined section 8(c) of the National Labor Relations Act (NLRA) which provides:

> The expressing of any view, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force of promise of benefit.

The Board further noted that while EERA contains no provision parallel to section 8(c), a similar standard was nevertheless appropriate.[4] Moreover, we note that the above NLRA

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[4]While PERB is not bound by decisions of the National Labor Relations Board, the Board will take cognizance of them where appropriate. (Carlsbad Unified School District (1979) PERB Decision No. 89; Los Angeles Unified School District (1976) EERB Decision No. 5.) (Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board.)

Although language similar to section 8(c) of the NLRA is absent from EERA, virtually identical language appears in section 3571.3 of the Higher Education Employer-Employee Relations Act which provides:

> The expression of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute, or be evidence of, an unfair labor practice under

standard, applies equally to employee organizations. (International Brotherhood of Electrical Workers v. NLRB (1951) 341 U.S. 694, 704 [28 LRRM 2115]; Boaz Spinning Company v. NLRB (6th Cir. 1971) 439 F.2d 876, 878 [76 LRRM 2956] citing The Bendix Corp v. NLRB (6th Cir. 1968) 400 F.2d 141, 146 [69 LRRM 2157]; see also Morris, The Developing Labor Law (2d Ed. 1983), p. 42.)

Accordingly, we hold that the test established in Rio Hondo, supra, is applicable in unfair practice cases to statements made by employee organizations. Since no facts have been alleged that SUTA's misrepresentations constituted a "threat of reprisal, force or promise of benefit," the District has failed to state a prima facie case of violation of section 3543.6(c).

The District's concern, that communication directly with employees "to explain the truth about proposals," would constitute an unlawful bypass of the exclusive representative, is unwarranted. We note that no law or regulation prohibits such communications, as long as the proposals are first presented to the exclusive representative and the District is merely restating its position. (Alhambra City and High School Districts (1986)

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any provision of this chapter, unless such expression contains a threat of reprisal, force, or promise of benefit; provided, however, that the employer shall not express a preference for one employee organization over another employee organization.

PERB Decision No. 560, pp. 15-18; Muroc Unified School District (1978) PERB Decision No. 80, pp. 21-22.)

ORDER

The unfair practice charge in Case No. S-CO-209 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Craib and Shank joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198

March 19, 1990

Robert Stroup
1725 N. Fine Street
Fresno CA 93727

Richard Sawtelle
Sanger Unified Teachers Association
5330 N. Fresno Street
Fresno CA 93710

Re: Sanger Unified School District v. Sanger Unified Teachers' Association
Unfair Practice Charge No. S-CO-209
DISMISSAL LETTER

Dear Mr. Stroup:

In the above-referenced charge filed on January 18, 1990, you allege that the Sanger Unified Teachers' Association (SUTA) violated section 3543.6(c) of the Government Code (EERA). Specifically, you allege SUTA engaged in bad faith bargaining by walking out of a mediation session on January 10, 1990, which had been scheduled approximately one month previously. You also allege that SUTA entered the mediation session on January 10 without any intention of reaching an agreement on any of the outstanding issues.

On February 9, 1990, you filed a first amended charge and allege that SUTA engaged in bad faith bargaining by involving students in the negotiation process, coaching students to serve as SUTA's political tools and by SUTA walking out of the mediation session which had been scheduled nearly one month before.

I indicated to you in my attached letter dated February 20, 1990, that the above-referenced charge did not state a prima facie case. You were advised if there were any factual inaccuracies or additional facts that would correct these deficiencies explained in that letter, you should amend that charge accordingly. You were further advised that unless you amended the charge to state a prima facie case or withdrew it prior to March 2, 1990, the charge would be dismissed.

On March 2, 1990, you filed a second amended charge. Your second amended charge restated the allegations contained in your previous charges and allege the following new facts, which I have summarized:

1. On or about February 13, 1990, SUTA president Ken Simpson approached the spouse of a board member and made the following statement, "We won't strike this year. We will strike in the fall."

2. On or about February 8, 1990, a mediation session was held in the state mediation and conciliation office in Fresno. During this meeting SUTA's representative agreed to present the mediator/district's proposals to his constituents in a neutral manner in order for the teachers to make an informed vote on the proposals.

3. On February 16, 1990, SUTA held a meeting among its members to vote on the mediator/district's proposals. An analysis of the proposals was prepared by SUTA and circulated among its members sometime before the meeting. SUTA's analysis contained numerous misrepresentations.

4. Despite SUTA's commitment to present the proposals in a neutral fashion, blatantly false statements, distortions and convenient omissions appeared in SUTA's analysis and SUTA intentionally misrepresented the district's proposals in order to ensure a rejection.

5. SUTA has engaged in a pattern of bad faith bargaining by walking out of the first mediation session when it had been scheduled nearly one month before, by making indirect but calculated threats of strikes to members of the board and by misrepresenting the district's proposals to its members.

In your amended charge you allege that this conduct establishes that SUTA has refused to negotiate in good faith in violation of Government Code section 3543.6(c). After reviewing your original and amended charges my investigation reveals the following additional facts.

On February 13, 1990, following a meeting of the district's board of trustees, SUTA president Ken Simpson approached Betty Crosby, spouse of board member Wayne Crosby and made the following statement, "We won't strike this year. We will strike in the fall."

On February 8, 1990, a mediation session was held in the state mediation and conciliation office in Fresno. During the meeting Richard Sawtelle, SUTA's representative, agreed to present the mediator/district's proposals to his constituents in a neutral manner.

On February 16, 1990, SUTA held a meeting among its members to vote on the mediator/district's proposals. An analysis of the proposals was prepared by SUTA and circulated among its members sometime before the meeting.

Based on the allegations set forth above and the reasons contained in this letter and my letter of February 20, 1990, I find you have failed to state a prima facie violation of section 3543.6(c) of the EERA.

In your second amended charge you have alleged additional facts regarding the statement by Mr. Simpson to Mrs. Crosby to support your allegation that SUTA has violated section 3543.6(c) of the EERA. The communication by Mr. Simpson appears to be covered by the right of free speech and thus does not violate the EERA. In a series of cases the Public Employment Relations Board (PERB or Board) concluded that despite the fact that the EERA does not contain specific language guaranteeing free speech, a free speech right is implied in the language and purpose of the Act. Rio Hondo Community College District (1980) PERB Decision No. 128; Antelope Community College District (1979) PERB Decision No. 97; Muroc Unified School District (1978) PERB Decision No. 80. In Rio Hondo PERB held that an employer's speech which contains a threat of reprisals or force or promise of benefit will constitute a violation of the Act. This standard applies with equal force to statements made by employee organizations.

In this case however, Mr. Simpson's statement to Mrs. Crosby does not constitute an outright threat of force or reprisal, or promise of benefit to the district's board of trustees. Simpson's statement was not made directly to the board of trustees and you have failed to show that this statement was made for the purpose of being communicated to the entire board for action. Even assuming that Mr. Simpson made this statement directly to the board of trustees and members of the board of the trustees felt uncomfortable because of Mr. Simpson's statement, the test is not whether any individual felt threatened or intimidated. Rather examination focuses on whether, under the existing circumstances, the statements reasonably tend to coerce or intimidate. Clovis Unified School District (1984) PERB Decision No. 389. You have failed to present any evidence which demonstrates the statement made by Mr. Simpson to Mrs. Crosby would reasonably tend to coerce or intimidate the board of trustees in their exercise of rights protected by the Act.

The amended charge also alleges that SUTA agreed to present the mediator/district's proposals in a neutral manner; SUTA's analysis of the proposals contained numerous misrepresentations; and SUTA intentionally misrepresented the district's proposals to its members in order to ensure a rejection. As I indicated in my letter of February 20, 1990, there are certain acts, which have a potential to frustrate negotiations and to undermine the

exclusivity of the bargaining agent that are held to be unlawful. These acts are deemed to be "per se" indicators of bad faith bargaining and a single act will indicate a violation. See, Pajaro Valley Unified School District (1978) PERB Decision No. 51. SUTA's failure to comply with its agreement to present the proposals to its members in a neutral manner is not, alone, a "per se" indicator of bad faith bargaining. Even utilizing the "totality of conduct" test, none of the new facts alleged in your second amended charge establish a prima facie violation of section 3543.6(c). Therefore, I am dismissing the charge based on the facts and reasons contained in this letter and my letter of February 20, 1990.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal (California Administrative Code, title 8, section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing (California Administrative Code, title 8, section 32135). Code of Civil Procedure section 1013 shall apply. The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty calendar days following the date of service of the appeal (California Administrative Code, title 8, section 32635(b)).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See California Administrative Code, title 8, section 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Extension of Time

A request for an extension of time in which to file a document with the Board itself must be in writing and filed with the Board

at the previously noted address. A request for an extension must be filed at least three calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (California Administrative Code, title 8, section 32132).

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

CHRISTINE A. BOLOGNA
General Counsel

By Michael E. Gash
Michael E. Gash
Regional Attorney

Attachment

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198

February 20, 1990

Robert Stroup, Attorney
Sanger Unified School District
1725 N. Fine
Fresno, CA 93727

Re: Sanger Unified School District v. Sanger Unified Teachers Association
Unfair Practice Charge No. S-CO-209
WARNING LETTER

Dear Mr. Stroup:

On January 18, 1990, you filed a charge in which you allege that the Sanger Unified Teachers Association (SUTA) violated section 3543.6(c) of the Government Code (EERA). Specifically, you alleged that the SUTA engaged in bad faith bargaining by walking out of a mediation session on January 10, 1990, which had been scheduled approximately one month previously. You also alleged that the SUTA entered the mediation session on January 10 without any intention of reaching an agreement on any of the outstanding issues.

On January 31, 1990, I spoke with you regarding your charge and you informed me that you would provide me with additional information to supplement it. On February 2, 1990, you telephoned me and stated that you were in the process of gathering new information and you would need additional time to provide me with the information for purposes of amending your charge. We agreed that you would provide me with the additional information or amend your charge by February 8, 1990. On February 8, 1990, Ms. Mary Beth deGoede, of your office informed me that you would be filing an amended charge. I received your amended charge on February 9, 1990.

Your amended charge restated the allegations contained in your original charge and alleged the following new information:

> 4. Between the dates of December 10 and 15, 1989, derogatory cartoons showing the teachers' alleged suffering caused by the Administration were hung on students' lockers. Photographs of these cartoons were taken and will be produced as the proceedings progress. The District is informed and believes and thereon alleges that Jim Gleeson, member of the Association's

> negotiating team, hung the cartoons on his students' lockers to instill the students with feelings of contempt toward the Administration.
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> 12. On January 23, 1990, a meeting was held by the District's Board of Trustees where public comment was entertained. Student, Christina Tusan, addressed the Board regarding her feelings about the teachers in a disrespectful tone. The District is informed and believes and thereon alleges that Christina Tusan was coached by members of the Union to serve as its advocate. A copy of Ms. Tusan's speech is attached to this charge as Exhibit C and made as part hereof.
>
> Moreover, Ms. Tusan further advocated her support for the Union and disrespect toward the Administration in a letter to the editor of the Sanger Herald. The letter, attached to this charge as Exhibit D and made a part hereof, contains a blatant falsehood that it was the mediator, and not the Association, who walked out of the mediation session. The District is informed and believes and thereon alleges that Ms. Tusan would have no knowledge of the events at the mediation session, nor would she have written such a false statement, unless she had been coached by members of the Association.

You also alleged in your amended charge that "the Union engaged in bad faith bargaining by involving students in the negotiations process, coaching them to serve as its political tools and by walking out of the mediation session when it had been scheduled nearly one month before."

My investigation revealed the following facts.

The Sanger Unified School District (District) is a public school employer. The Sanger Unified Teachers Association (SUTA) is an

employee organization and the exclusive representative of an appropriate unit of certificated employees.

The District and SUTA are parties to a collective bargaining agreement that expired on June 30, 1989. The District and SUTA began negotiations on a successor contract in or about May, 1989. No agreement has been reached on a successor contract and impasse was declared.
Between the dates of December 10 and 15, 1989, cartoons depicting the teachers' allegedly suffering were hung on students' lockers. Sometime in December 1989, a mediation session was scheduled for January 10, 1990. Prior to the scheduled mediation session you spoke with Tom Jones, the state mediator, and informed him that there should be no cut-off time for the January 10th session. You did not speak directly with Richard Sawtelle, the negotiator for SUTA.

On January 10th the scheduled mediation session commenced between the District and the SUTA negotiating teams. At the beginning of the session you informed the mediator that the District was willing to mediate as long as necessary to reach an agreement. Between 10:00 a.m. and 11:00 a.m. on January 10th, the mediator informed the District that Sawtelle would not continue the session after 6:00 p.m. because of an another engagement.

Throughout the remainder of the day, the District and SUTA continued to exchange informal concepts in an attempt to reach an agreement. Sometime after 4:00 p.m. the District informed the mediator that it was going to prepare a comprehensive formal proposal for a two-year agreement. At 5:40 p.m., while the District was still dictating the proposal, the mediator informed the District team that the SUTA team was leaving. Approximately twenty minutes later, the mediator informed the District team that two members of SUTA's team had returned to accept the District's proposal, but they were not prepared to mediate.

On January 19, 1990, another mediation session was held between the District and SUTA. This session began at 10:00 a.m. and ended at 1:00 a.m. the following morning. A session was also held on January 22, 1990, which commenced at 10:00 a.m. and ended at 11:00 p.m. Another session was held on February 2, 1990.

On January 23, 1990, during public comment, at the Board of Trustees' meeting, a student, Christina Tusan made a statement to

the Board regarding her support for the teachers in the district. Ms. Tusan also sent a letter to the editor of the Sanger Herald advocating her support for teachers in the district, which was published.

Based upon the allegations set forth above, I do not find that you have established a prima facie violation of section 3543.6(c) of the EERA.

In determining whether a party has violated section 3543.6(c) of the EERA, the Public Employment Relations Board (PERB) utilizes the "per se" or the "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. Stockton Unified School District (1980) PERB Decision No. 143. In Pajaro Valley Unified School District (1978) PERB Decision No. 51, PERB defined the distinctions between the two tests. The Board noted:

> The National Labor Relations Board (hereafter NLRB) has long held that [a duty to bargain in good faith] requires that the employer negotiate with a bona fide intent to reach an agreement. In re Atlas Mills. Inc. (1937) 3 NLRB 10 [1 LRRM 60]. The standard generally applied to determine whether good faith bargaining has occurred has been called the 'totality of conduct' test. See NLRB v. Stevenson Brick and Block Co. (4th Cir. 1968) 393 F.2d 234 [68 LRRM 2086] modifying (1966) 160 NLRB 198 [62 LRRM 1605]. This test looks to the entire course of negotiations to determine whether the employer has negotiated with the requisite subjective intention of reaching an agreement.

There are certain acts, however, which have such a potential to frustrate negotiations and to undermine the exclusivity of the bargaining agent that they are held unlawful without any determination of subjective bad faith on the part of the employer. Pajaro, supra, at pp. 4-5. These acts are deemed to

be "per se" indicators of bad faith bargaining and a single act will indicate a violation.

The charge, as presently written, and amended, fails to state a prima facie violation of EERA section 3543.6(c). SUTA's leaving the January 10th session at 5:40 p.m., cannot alone, establish a "per se" violation of section 3543.6(c).

You did not have any direct contact with Sawtelle prior to the mediation session of January 10th to specifically set a time schedule for that session. The session began at approximately 10:00 a.m., and between 10:00 a.m. and 11:00 a.m. you were informed by the mediator that Sawtelle would not continue the session after 6:00 p.m. The session lasted over seven hours and at 5:40 p.m. the District had not finished dictating its proposal. In addition, two members of SUTA's team returned and offered to accept the proposal, but not mediate it at that time. Furthermore, there have been three additional mediation sessions held since the January 10th session lasting in excess of twenty-eight hours. SUTA's single act of leaving the mediation session on January 10th has not significantly frustrated the negotiation process and therefore does not violate section 3543.6(c) of EERA.

You also submitted a negotiations update memorandum, which was circulated by SUTA sometime in December, 1989, a transcript of a statement made by SUTA president-elect, Ken Simpson, during public comment, at the District's Board of Trustees' January 9, 1990, meeting, a transcript of a statement made by a student, Christine Tusan, during public comment, at the District's January 23, 1990, meeting, and a copy of Ms. Tusan's letter to the editor, which was published in the Sanger Herald. You have failed to show how the conduct of Ms. Tusan has involved students in the negotiation process between the District and SUTA.

Your allegations suggest that Ms. Tusan was acting on behalf of, or as an agent for SUTA. Under California common law, the acts of an agent within his/her actual or apparent authority are binding on the principal. Antelope Valley Community College District (1979) PERB Decision No. 97. Ostensible or apparent authority must be established through the acts of the principal. To prove ostensible or apparent authority one must establish representation by the principal of the agency; justifiable reliance by the party seeking to impose liability on the principal; and, a change in position resulting from that

reliance. Inglewood Unified School District (1990) PERB Decision No. 792.

You have failed to allege or show how the statement made by Ms. Tusan, or her published letter to the editor resulted in a change in the position of the district regarding its negotiations with SUTA. Section 3543.3 of EERA specifically states:

> A public school employer or such representatives as it may designate . . . shall meet and negotiate with and only with representatives of employee organizations selected as exclusive representatives of appropriate units upon request with regard to matters within the scope of representation. (Emphasis added.)

Clearly, you are under no obligation to meet and negotiate with a student who makes comments during the public comments portion of a board of trustees' meeting. Similarly, you are not obligated to respond to any comments made in a letter to the editor of a local newspaper. You have also failed to show that Ms. Tusan or any other student is the "political tool" or advocate for the SUTA. Even assuming Ms. Tusan was an agent of SUTA, her comments are protected free speech. In Rio Hondo Community College District (1980) PERB Decision No 128, at pp. 18-20, PERB adopted for cases under the EERA the principle of protected free speech set forth in section 8(c) of the National Labor Relations Act:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

PERB noted (at p. 20, fn.11) that a party's communication may also escape protection if it evidences an attempt to bypass the other party's bargaining representative. See, e.g., Westminister School District (1982) PERB Decision No 277, pp 5-12.

None of the exceptions to the principle of protected free speech are apparent in the present case. The statements by Ms. Tusan during public comments and her letter to the editor contained no threats or promises and did not attempt to bypass the District's bargaining representative. Ms. Tusan's statements were thus protected free speech. Similiarly, the statements made by Mr. Simpson and the cartoons are protected free speech. Utilizing the "totality of conduct" test, none of these facts establish a prima facie violation of section 3543.6(c) of the EERA.

You also allege in your charge that SUTA entered the mediation session on January 10th without any intention of reaching an agreement on any of the outstanding issues to be negotiated. However, you failed to provide any specific information to support this allegation.

For these reasons, the charge as amended does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled Second Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the Charging Party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before March 2, 1990, I shall dismiss your charge. If you have any questions on how to proceed please call me at (916) 322-3198.

Sincerely,

Michael E. Gash
Regional Attorney

MEG:djt